

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 Ramon Collazo,
4 Plaintiff,

5 v.

6 R. James Nicholson, et al.,
7 Defendants.

Civil No. 05-1783 (GAG)

8 **OPINION AND ORDER**

9 On July 14, 2005, the plaintiff, Ramon Collazo (“Collazo”), commenced this action against
10 his employer, R. James Nicholson, Secretary, Department of Veterans Affairs (“VA”), alleging a
11 hostile work environment in violation of the Age Discrimination in Employment Act (“ADEA”).
12 Presently before the court is the defendant’s motion for summary judgment (Docket No. 8) which
13 the plaintiff opposed (Docket No. 15). After reviewing the relevant facts and applicable law, the
14 court **GRANTS** defendant’s motion for summary judgment.

15 **I. Summary Judgment Standard & Local Antiferriting Rule**

16 Summary judgment is appropriate when “the pleadings, depositions, answers to
17 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
18 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter
19 of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In order to
20 defeat summary judgment, the nonmoving party must “set forth specific facts showing that there
21 is a genuine issue for trial.” See Fed. R. Civ. P. 56(e). The court must view the record in the light
22 most favorable to the party opposing summary judgment and draw all reasonable inferences in the
23 nonmovant’s favor. See id. The court must deny the motion if it finds that some genuine factual
24 issue remains, the resolution of which could affect the outcome of the case. Anderson v. Liberty
25 Lobby, Inc., 477 U.S. 242, 284 (1986).

26 To aid the court in the task of identifying genuine issues of material fact, the United States
27 District Court for the District of Puerto Rico has adopted Local Rule 56. Local Rule 56(b) requires
28 the moving party to file, annexed to its motion, “a separate, short and concise statement of material

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1 facts . . . as to which the moving party contends there is no genuine issue of material fact to be
2 tried.” Local Rule 56(b). The movant must support each statement with a citation to the record.
3 See *id.* The nonmoving party must then submit with its opposition “a separate, short, and concise
4 statement of statement of material facts,” admitting, denying or qualifying the moving party’s facts
5 by reference to each numbered paragraph of the moving party’s statement of material facts. See
6 Local Rule 56(c). Moreover, the nonmoving party must support each denial or qualification with
7 a record citation. See *id.* The VA complied with Local Rule 56(b). See Docket No. 10. Collazo,
8 however, did not comply with Local Rule 56(c). He failed to specifically refer to each numbered
9 paragraph in the VA’s statement of uncontested facts and to support each fact with a proper record
10 citation. See Docket No. 17. Collazo’s failures have hampered the court’s effort to determine what
11 factual disputes exist. Nevertheless, the court has endeavored to treat as undisputed only those facts
12 included in the VA’s brief which Collazo does not contest and those facts presented by Collazo that
13 do not conflict with the VA’s recitation and include proper record citations.

14 **II. Relevant Factual & Procedural Background**

15 The parties’ statements of material facts, credited only to the extent either admitted or
16 properly supported by record citations in accordance with Local Rule 56 and viewed in the light
17 most favorable to Collazo, reveal the following undisputed material facts:

18 On April 16, 1995, the VA appointed Collazo to the position of Program Support Clerk in
19 the Medical Administration Service of the San Juan VA Medical Center. The VA reassigned
20 Collazo to the position of File Clerk on November 10, 1996. On April 16, 1997, while Collazo held
21 the File Clerk position, the VA converted him to a career conditional appointment. In accordance
22 with an Equal Employment Opportunity (“EEO”) Settlement Agreement effective February 4,
23 1998, the VA transferred Collazo the position of Medical Clerk in the Ambulatory Care Specialty
24 Clinic. The VA later promoted Collazo to the position of Patient Services Assistant on August 2,
25 1998, as a result of his selection from a Merit Promotion Announcement. See Docket No. 10, ¶¶
26 1-3, 5.

27 Upon Collazo’s transfer Medical Clerk, Jose Rivera (“Rivera”) became his supervisor. See
28 id. at ¶ 6. Collazo contends that he received successful performance evaluations and no allegations

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1 of patient abuse were raised while he worked under Rivera. See Docket No. 17, ¶ 9. He also
2 alleges that Rivera's behavior toward him eventually became hostile and threatening. Collazo
3 contends that Rivera directed nasty remarks to him during meetings, repeatedly called him "old
4 man," and constantly mistreated him. See id. at ¶¶ 10-11.

5 Two of Collazo's co-workers and a patient witnessed Rivera's treatment of Collazo. A co-
6 worker, Edwin Pantojas, heard Rivera call Collazo a useless old man, use foul language towards
7 Collazo in an aggressive fashion, and address Collazo disrespectfully. He witnessed Rivera make
8 nasty remarks to Collazo and challenge him to fight. See id. at ¶¶ 10, 12. Brunilda Ayala, another
9 co-worker, witnessed Rivera refer to Collazo as an old man. She also heard Rivera use foul
10 language against Collazo. See id. at ¶ 18. Antonio Tirado, a former VA patient, witnessed Rivera
11 call Collazo old man and tell him that he should leave. See id. at ¶ 13.

12 On four occasions, Collazo filed reports regarding his encounters with Rivera. On March
13 25, 2002, Collazo filed a complaint with VA Police Service alleging that Rivera had threatened him
14 on March 18, 2002. Collazo told the VA Police Service that Rivera had threatened to inflict bodily
15 harm on him off the Medical Center premises. See Docket No. 10, ¶ 9. Following the incident,
16 Collazo took time off of work due to emotional distress. See Docket No. 17, ¶ 10.

17 On February 11, 2003, Collazo wrote a Report of Contact to Myriam Zayas ("Zayas") in
18 which he described another incident with Rivera. See id. at ¶ 12. Collazo reported that Rivera held
19 three meetings on February 6, 2003. His report indicated that during one meeting Rivera said, "if
20 someone has grudges against me, they better wait for me outside at 4:30." Docket No. 10, ¶ 11.
21 Collazo and two of his co-workers perceived this statement to be directed to Collazo because of the
22 previous complaint he filed with the VA Police Service. See id.

23 _____ On March 25, 2003, Collazo submitted another Report of Contact to Zayas in which he
24 stated that he approached Rivera to discuss issues pertaining to the Dermatology Clinic. During
25 the discussion, Collazo reported, Rivera stated that he did not want any more problems, called him
26 a useless old man, told him he did not know how to resolve problems, and suggested that he should
27 leave. See Docket No. 17, ¶ 13; Docket No. 10, ¶ 12. Antonio Tirado ("Tirado"), a former VA
28 patient, witnessed the incident. Tirado heard Rivera call Collazo an old man and tell him that he

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1 should leave. See Docket No. 17, ¶ 13.

2 The following month, Collazo filed another report with the VA Police Service regarding
3 an incident with Rivera on April 16, 2003. On April 16, Rivera called Collazo to his office and
4 handed him a memorandum from Angel Roman-Cruz (“Roman”), Assistant Medical
5 Administrative Officer. The memorandum referenced and attached patient complaints issued
6 against Collazo between January 3, 2003 and March 19, 2003. The complaints alleged violations
7 of customer service standards and conduct. The memorandum also notified Collazo that he would
8 be reassigned, effective immediately, to a non-patient processing work area. Rivera requested that
9 Collazo sign the memorandum, but Collazo refused to do so until he reviewed the complaints.
10 Collazo reported that Rivera threatened him when he refused to sign. See Docket No. 10, ¶¶ 13-16.
11 Specifically, Collazo told a VA Police Officer that Rivera said, “what a shame it’s not 4:30 to break
12 your face you unhappy person (‘infeliz’).” Id. at ¶ 16, Exhibit 11. In a Voluntary Witness
13 Statement completed at the request of the VA Police Officer, Rivera claimed that Collazo refused
14 to sign the memorandum, became furious, hostile, rude and disrespectful, and threatened to go to
15 the police and the Federal Bureau of Investigation. Rivera also stated that Collazo opened his
16 office door and screamed that Rivera was threatening and harassing him. At that time, Rivera told
17 Collazo to calm down and return to his work area. Collazo refused and stated he was going to the
18 Security Office. See id. at ¶ 17. On April 25, 2003, Collazo filed an informal EEO harassment
19 complaint regarding this incident. See Docket No. 17, ¶ 14; Docket No. 10, ¶ 23. He also
20 responded to the patient complaints by submitting a memorandum directed to Zayas dated April
21 22, 2003 and two positive patient statements regarding his work. See Docket No. 17, ¶ 16.

22 On June 9, 2003, the VA Medical Center Director convened an Administrative Board of
23 Investigation to investigate the patient complaints against Collazo at the request of Dr. Gerardo
24 Franceschi, former Associate Chief of Staff to the Ambulatory Care Service. See Docket No. 10,
25 ¶ 18. While the Board investigated the complaints, Collazo was placed in a position with no patient
26 contact. See id. at ¶ 13. The Board found no evidence of patient abuse. See Docket No. 17, ¶ 17.
27 It did, however, conclude that Collazo had difficulties in listening and understanding customer
28 specific situations, showing empathy and care, and asking appropriate questions to offer helpful

1 responses to customer needs. See Docket No. 10, ¶ 20. In its Investigation Report, the Board
2 recommended that Collazo be relocated to an area with minimal contact with the public and patients
3 and employees with high risks of becoming violent. See id. In accordance with the
4 recommendation, the VA reassigned Collazo to address correction and patient demographic duties
5 in the Means Test area. See id. at ¶ 21-22.

6 On April 25, 2003, Collazo filed an informal harassment complaint with EEO counselor
7 alleging that he suffered age discrimination when Rivera threatened him on April 16, 2003 and
8 when the VA reassigned him to non-patient processing area. On June 11, 2003, he filed a formal
9 EEO Complaint alleging the same.¹ The Equal Employment Opportunity Commission (“EEOC”)
10 eventually issued a decision in favor of the VA. On appeal, the EEOC Office of Federal Operations
11 upheld the decision. See id. at ¶ 23. On July 14, 2005, at the age of 69, Collazo filed the instant
12 complaint. See Docket No. 1, ¶ 5.

13 **III. Settlement Agreement**

14 In his complaint, Collazo seeks relief in the form of a declaratory judgment that the VA
15 violated the February 4, 1998 settlement agreement. The VA argues, in its memorandum in support
16 of its motion for summary judgment, that the court lacks jurisdiction to grant such relief because
17 Collazo failed to properly exhaust administrative remedies. Alternatively, the VA contends that
18 the court should deny Collazo’s request for declaratory relief because the VA fully complied with
19 the agreement. The court need not address the VA’s arguments because Collazo clearly abandons
20 his request for declaratory relief in his memorandum in opposition to the VA’s summary judgment
21 motion. Specifically, he clarifies that his claim is limited to the hostile work environment he
22 underwent while under Rivera’s supervision. Any reference to the settlement agreement, Collazo
23 explains, is made to illustrate his job history and how and when he became Rivera’s subordinate.
24 See Docket No. 18, p. 2. Therefore, the court will no longer consider Collazo’s request for a

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27 ¹ On October 7, 2003, Collazo filed a second complaint alleging he was harassed when he
28 was not allowed to perform his duties. See Docket No. 17, ¶ 24, Exhibit 10. The specific
allegations included in this complaint and its resolution at the agency level are unknown to this
court.

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1 declaratory judgment regarding the Settlement Agreement.

2 **IV. Hostile Work Environment**

3 While hostile work environment claims first arose in the gender discrimination context, the
4 First Circuit has since recognized such claims for members of any protected class. See Rivera-
5 Rodriguez v. Frito Lay Snacks Caribbean, 265 F.3d 15, 24-25 (1st Cir. 2001) (discussing hostile
6 work environment claim under ADEA). To establish a *prima facie* case of age-based hostile work
7 environment under the ADEA, Collazo must demonstrate that: 1) he is a member of a protected
8 class; 2) that he was subjected to unwelcome ageist harassment; 3) the harassment was based on
9 age; 4) the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's
10 employment and create an abusive work environment; 5) the objectionable conduct was both
11 objectively and subjectively offensive such that a reasonable person would find it hostile or abusive
12 and the victim did in fact perceive it to be so; and 6) some basis for employer liability has been
13 established. Reyes Vega v. Pepsi Cola P.R. Distrib. LLC, 371 F. Supp. 2d 21, 27 (D.P.R. 2005)
14 (citing O'Rourke v. City of Providence, 235 F.3d 713, 728 (1st Cir. 2001)).

15 The VA argues that Collazo fails to present sufficient evidence from which a reasonable
16 person could infer that the alleged harassment was age-based or sufficiently severe or pervasive so
17 as to alter the conditions of plaintiff's employment and create a hostile work environment.

18 An employee alleging harassment must demonstrate that the abusive conduct was directed
19 at him because of a protected characteristic; in this case, the protected characteristic is age. See
20 Quiles-Quiles v. Henderson, 439 F.3d 1, 7-8 (1st Cir. 2006). The record indicates that Rivera made
21 an age-related comment during only one of the four reported incidents. Specifically, during the
22 March 23, 2003 encounter, Rivera called Collazo useless old man. Collazo also provides testimony
23 from two co-workers that Rivera called him old man.² Furthermore, he alleges that Rivera
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26 ² Collazo offers the testimony of two co-workers, Pantojas and Ayala, that Rivera called him
27 old man on occasions other than the March 23, 2003 encounter. Neither Pantojas nor Ayala offers
28 any testimony regarding when, where, or how often he or she witnessed Rivera mistreat Collazo or
call him old man. See Docket No. 17, ¶¶ 10, 12, Exhibit 1, ¶¶ 5, 7 (Pantojas); Docket No. 17, ¶ 18,
Exhibit 7, ¶ 15 (Ayala).

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1 constantly called him old man. With the exception of the March 23, 2003 incident, however, the
2 record does not indicate when, where, or how often Rivera made such age-related comments.
3 Moreover, none of the additional remarks and threats of which Collazo complains relate to his age.
4 Absent additional evidence of age-based animus, the connection between Rivera's harassment and
5 Collazo's age is speculation on Collazo's part. Although ill will unquestionably existed in
6 Collazo's working environment, the evidence cannot support a conclusion that this ill will stemmed
7 from Collazo's age. Thus, Collazo fails to satisfy the "age-based" prong of his *prima facie* case,
8 and his claim must be dismissed.

9 Apart from the fact that only one incident involved an age-based comment, the record does
10 not illustrate harassment that was sufficiently severe or pervasive to create an objectively
11 intimidating, hostile, or offensive work environment. In order for Collazo's hostile work
12 environment claim to succeed, he must show that Rivera's conduct was so severe or pervasive that
13 it altered the terms or conditions of his employment. See Lee-Crespo v. Schering-Plough Del
14 Caribe, Inc., 354 F.3d 34, 46-47 (1st Cir. 2003). There is no mathematically precise test used to
15 determine whether a plaintiff has demonstrated sufficiently severe or pervasive harassment. See
16 Pomales v. Celulares Telefónica, Inc., 447 F.3d 79, 83 (1st Cir. 2006) (citing Kosereis v. Rhode
17 Island, 331 F.3d 207, 216 (1st Cir. 2003)). To assess whether a workplace is a hostile environment,
18 the court must consider the totality of the circumstances. Factors the court should consider include
19 "the frequency of the discriminatory conduct; its severity; whether it is threatening or humiliating,
20 or merely an offensive utterance; and whether it unreasonably interferes with the employee's work
21 performance." Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993).

22 In this case, the behavior in question does not rise to the level of severity or pervasiveness
23 generally considered actionable. Taking all of the evidence in the light most favorable to Collazo,
24 the record discloses that within one year and one months time the following occurred: Rivera called
25 Collazo useless old man and old man; he used foul, aggressive language in the workplace; he
26 threatened to harm Collazo off the Medical Center premises; he announced during a meeting that
27 anyone with a problem with him should meet him outside; and he told Collazo he was lucky it
28 wasn't 4:30 so that he could break his face. This conduct, while inappropriate and unprofessional,

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1 is not sufficiently severe or pervasive to support a hostile work environment claim under the
2 ADEA. Therefore, Collazo has failed to meet his burden required to establish a valid hostile work
3 environment claim, and accordingly, we must grant the VA's motion for summary judgment.

4 **V. Conclusion**

5 For the aforementioned reasons, the court **GRANTS** the defendant's motion for summary
6 and dismisses the plaintiff's claim with prejudice. Judgment shall be entered accordingly.

7 **SO ORDERED.**

8 In San Juan, Puerto Rico this 20th day of September 2006.

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10 S/Gustavo A. Gelpí

11 GUSTAVO A. GELPI
12 United States District Judge
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